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ABSTRACT

This paper reviews the literature on the background, legal process, and implications of the Felix consent decree, a legal settlement in which the State of Hawaii agreed to improve its special education program and to develop a self-sustaining system of care for delivering special education services. The paper begins by reviewing federal laws (the Individuals with Disabilities Education Act and the Rehabilitation Act of 1973, Section 504), the history of the Felix consent decree, the Felix class action lawsuit, and the following court decisions. In addition, the paper examines the impact of the Felix consent decree on the State of Hawaii, its involved state departments, and its public school educational system. Research reviewed covers the status of mental health services, Hawaii's system of care, and other Felix programs. The paper concludes that, as a result of the Felix consent decree, procedural and program changes affecting both regular and special education programs have been implemented. (Contains 49 references.) (DB)

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THE IMPACT OF THE FELIX CONSENT DECREE

February 2002

By
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Abstract

The State of Hawaii faces many challenges as it attempts to fulfill its obligation under the Felix consent decree. This research begins by exploring relevant background information about IDEA/504 federal laws, the history of the Felix consent decree, the Felix class action lawsuit, and the following court decisions. In addition, a comprehensive overview examines the impact of the Felix consent decree on the State of Hawaii, its involved state departments, and its public school educational system. This research reviews the status of mental health services, Hawaii's system of care, and other Felix programs. As a result of the Felix consent decree, procedural and program changes and its effect on state departments, as well as its effect on the special and regular education programs were also explored in further detail.

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Chapter One

INTRODUCTION

Throughout the media, the public is inundated with stories of the Felix consent decree. We hear about lawyers arguing for student rights, money pouring into special education, and the shortage of teachers across the state. The list goes on and on. However, where did it all begin? And, could this fiasco have been avoided?

Jennifer Felix was 20 when her mother, Frankie Servetti-Coleman, filed for a class-action lawsuit alleging state violations of federal laws requiring education and mental health services for special needs children. Jennifer Felix was a disabled student with left-brain damaged, epilepsy, and visual and speech impairment resulting from a viral infection when she was an infant. In 1983 Jennifer's family left California and moved to Maui. According to Jennifer's mother, her family could not find any services on Maui for Jennifer. She described her daughter as "abusive" to herself and had a history of running away. When she was nearly 16 years old in 1989, her family had to send her to the Brown Schools, a residential facility in Texas for brain-damaged children. She was in a treatment program in Texas for nine years until August 1998 at the State of Hawaii's expense (Altonn, H., The Star Bulletin, May 29, 2000, A1, A8).

So what ever happened to Jennifer? What will be done for students like her in the future? And why did the system fail? The questions are simple while the answers are complex. These are just a few of the questions that will be answered about this very challenging situation that the state currently faces as it embarks on a new standard of education.

Statement of the Problem

In 1995, the Felix Consent Decree was legally defined as, "children and youth with disabilities residing in Hawaii, from birth to 20 years of age who are eligible for and in need of education and mental health services have not been adequately served because programs, services, and placements are either unavailable, inadequate, or inappropriate because of a lack of continuum of services, programs, and placements" (Implementation Plan, 1995).

The court's awareness of this problem has resulted in a comprehensive change in Hawaii's public school system. This decree has forced the public school system to collaborate with outside agencies and other state departments. These collaboration efforts have resulted in budgetary challenges and a change in the overall policy regarding classroom practices. Teacher recruitment and training, as well as communication between departments have continued to challenge the education leaders.

Statement of the Purpose

The Felix consent decree has forced the Department of Education to review its policies and practices when it comes to educating all students. Students requiring special services are now receiving those services. Furthermore, the Department of Education has taken a proactive approach with its newly developed Comprehensive Student Support System (CSSS) process. No longer can the public school system operate behind closed doors, immune to scrutiny. Rather the legislature, court system, and educators themselves can systematically look for ways to improve the quality of our system.

The purpose of this paper is to explore the impact of the Felix consent decree on the State of Hawaii and its involved state departments, mainly the Department of Education. This paper is intended to provide an overview of special education services and its system of care. This is not a case study, but rather a literature review on the Felix consent decree. Hopefully, this paper can help those involved in education to have a better understanding about the impact of the Felix consent decree on the State of Hawaii and its impact on the present and future of our educational system. The principal investigator will examine its impact on the educational system, the impact on various state departments and agencies, and its direct impact on Hawaii's public schools.

Research Questions

These questions will be answered in this literature review: (1) What is the impact of the Felix consent decree on the State of Hawaii? (2) How did the Felix consent decree affect the State departments? (3) What is the impact of the Felix consent decree on the public schools educational system? Furthermore, this paper will also cover the following relevant background information in order to better understand the significance of these questions: federal laws, the court decision, the old system of care in delivery mental health services, the new system of care, the State's obligation under the Felix consent decree, the State's implementation problems, the State's current and future challenges, and the program changes within the Department of Education.

Definition of Terms

IDEA (Individuals with Disabilities Education Act):

New name given in 1990 to federal law, Public Law (P. L.) 94-142, Education for All Handicapped Children Act (EHA) of 1975. This law was passed with many provisions for assuring free appropriate public education for all students with disabilities (Jones, N. L., & Aleman, S. R, 2000).

Mental Health Services:

Mental health services are an array of clinical services that include assessments and diagnostic services, therapy, therapeutic support, crisis interventions, and community/hospital-based treatment services. Services are delivered according to individual needs. The goal is to create a mental health treatment plan for each individual in need of these services. This documented treatment plan shall include measurable objectives related to goals, methods and dates for achievement of goals, frequency of treatment, procedures, staff assigned and date(s) the plan is reviewed and revised (Clinical Standards Manual, 1999).

Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112):

This is a civil rights legislation to prevent discrimination against individuals with disabilities by entities that receive federal funds. Section 504 states: "No otherwise qualified individual with a disability...shall solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" (29 U. S. C. § 794).

The following terms are associated with the statutory language of IDEA:

FAPE (Free Appropriate Public Education) means:

special education and related services that (a) have been provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the State educational agency; (c) include an appropriate preschool, elementary, or secondary education in the State involved; (d) are provided in conformity with the individualized education program required under section 614 (d) of this title (20 U.S.C. § 1414 (8)).

Individualized Education Program (IEP) means:

A written statement for each child with a disability that is developed, reviewed, and revised in accordance with Section 1414 (d) (11).

Special Education is defined in 20 U.S.C. § 1401 (25) as:

specifically designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including (a) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (b) instruction in physical education.

Related Services is defined in 20 U.S.C. § 1401 (22) as:

> Transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.

Transition services means:

> A coordinated set of activities for a student with a disability that (a) is designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (b) is based upon the individual student's needs, taking into account the student's preferences and interests; and (c) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and when appropriate, acquisition of daily living skills and functional vocational evaluation (20 U.S. C. § 1401 (30).

Chapter Two

AN OVERVIEW

PART I

The Impact of the Felix Consent Decree on the State of Hawaii

Historical Background

The Individuals with Disabilities Education Act (IDEA), also known as P. L. 105-17, has had a great impact on the lives of approximately 5 million children with disabilities in the United States. IDEA is the primary federal law that governs the education of children with disabilities. The body of law on IDEA is constantly evolving, influenced by Congress proposals for changes and subjected to the courts' interpretations to the statutory language. Thus, the State Department of Education must rely on the U.S. Department of Education, the court, and the attorneys for guidance and clarification on potential ambiguities in order to be compliant with the federal law.

IDEA's root is traced back to the Education for All Handicapped Children Act (EHA) of 1975, known as P.L. 94-142. The original enactment of IDEA was during 1990 when P. L. 101-476 was renamed the Individuals with Disabilities Education Act to reflect a "child-centered" focus (Jones, N. L., & Aleman, S. R., 2000). IDEA has been amended numerous times and was last amended in 1997. Upon endorsing P. L. 105-17 into law at the Signing Ceremony in 1997, President Clinton reiterated the intent of IDEA as:

> "The right to receive an education that all children deserve. It has given children who would never have had it, the right to sit in the same classrooms, to learn the same skills, to dream the same dreams as their fellow Americans. The expanded IDEA reaffirms and strengthens our national commitment to provide a world-class education for all our children. It ensures that our nation's schools are safe

> and conducive to learning for children, while scrupulously protecting the rights of our disabled students." (Jones, N. L, & Aleman, S. R., 2000, p. 1:1)

On May 4, 1993, the Governor, Superintendent of Education, and Director of Health were sued in Federal District Court on behalf of Jennifer Felix and six other students with disabilities. The suit claimed the state had failed to provide adequate mental health services to children and adolescents in need of these services to benefit from their educational program. On March 8, 1994, the case became a class action suit on behalf of all children and adolescents between birth and age 20 with disabilities who reside in Hawaii and who are eligible for and in need of educational and mental health services, but were not receiving these services (Implementation Plan, 1995).

The lawsuit has drawn public attention to the magnified problems of the public schools "old system of care" prior to the Felix consent decree. Prior to the Felix vs. Governor John Waihee class-action lawsuit, children and adolescents with disabilities who were in need of education and mental health services were not receiving such services. Although entitled to services under the Individuals with Disabilities Education Act (IDEA) and Section 504 of the Rehabilitation Act, students did not receive adequate services because programs and placements were unavailable, inadequate, or were considered inappropriate.

On May 24, 1994, Federal Judge David Ezra ruled that the state had "systematically failed to provide required and necessary educational and mental health services to qualified handicapped children of the State of Hawaii in violation of the Individuals with Disabilities Education Act and the Rehabilitation Act of 1973 (Higa, M., 1998). As a result of loss in the lawsuit, the State of Hawaii did not appeal, and instead the State entered in a settlement called the Felix Consent Decree, which is an agreement

to improve Hawaii's special education program and to develop a self-sustaining system of care for delivering special education services. The attorney general recommended that the state agreed to a consent decree to preserve some measure of state control rather than risk a federal court order placing the entire system in receivership and the loss of all autonomy (Higa, M., 1998).

On October 25, 1994, the Court approved the Felix consent decree, which required the state to provide free appropriate public education (FAPE) under IDEA and Section 504 of the Rehabilitation Act, and to create and implement a system of care following the principles of Hawaii Child and Adolescent Service System Program (CASSP) for the Felix-Class population by June 30, 2000 (Implementation Plan, 1995). The Child and Adolescent Service System Program (CASSP) principles are as follows:

1. The system of care will be child-centered and culturally sensitive, with the needs of the child and family determining the types and mix of services provided.
2. All Hawaii children will have full access to a comprehensive array of services that addresses the child's educational, physical, emotional, recreational, and developmental needs.
3. Family preservation and strengthening along with the promotion of physical and emotional well being for the children of Hawaii shall be the primary focus of the system of care.
4. All Hawaii children will receive services within a least restrictive, most natural environment that is appropriate to their individual needs.
5. Any treatment which requires the removal of a child from his/her family or other permanent placement shall be an integral consideration at the time of removal.
6. Each child in need of treatment will be provided with an effective mechanism to ensure that services are delivered in a coordinated and therapeutic manner, and that each child can move throughout the system in accordance with his/her changing needs, regardless of point of entry.
7. Families or surrogate families will be full participants in all aspects of the planning and delivery of services.

8. As children reach maturity, they will be full participants in all aspects of the planning and delivery of services.

9. Early identification of educational, social, emotional, and physical needs will be promoted in order to enhance the likelihood of successful early interventions and lessen the need for more intensive and restrictive services.

10. The rights of children will be protected, and effective advocacy efforts for children will be promoted.

Problems with the "old system of care"

Prior to the Felix Consent Decree, Hawaii's public schools special education program was described as "inadequate" compared to the other states. U.S. District Judge David Ezra referred to Hawaii's old system of care as the "Dark Ages." As cited in the Felix consent decree, the old system failed to meet the needs of the special needs children and their families. The problem was legally defined as, "children and youth with disabilities residing in Hawaii, from birth to 20 years of age who are eligible for and in need of education and mental health services have not been adequately served because programs, services, and placements are either unavailable, inadequate, or inappropriate because of a lack of a continuum of services, programs, and placements" (Implementation Plan, 1995).

The problems were in the areas of identification, transitions, arrays of services, and access to services (Interagency Comprehensive State Plan, 1995). People were reluctant to refer children because of the lack of available services. Services were not provided in a timely manner. It was difficult to achieve well-supported transitions for families and their children when children move from one setting or service to another within one or more agencies because transition was not a component in the individualized

plan. Thus, in the various settings and service systems across agencies, services were defined, accessed, and delivered differently. There were unclear and inconsistent tools of assessment for accessing the arrays of services. Inexpensive community-based programs were not readily available. Thus, access to community-based programs was limited, providing few alternatives to more expensive institutionalization. Some children needing mental health services were sent to the mainland. Access to services was difficult due to the lack of available services, the lack of involvement of all responsible for providing the services, and the general lack of responsiveness by the system for planning and carrying out services (Implementation Plan, 1995).

From a community perspective, there was lack of a locally planned and managed system of care. Therefore, there was a lack of communication, coordination, and collaboration among the families, schools, and the service providers. Parents complained about a lack of timely access to needed services due to delays, waiting lists, suppression of referrals, and general confusion among service providers and families. There were numerous state agencies in several departments, which made it difficult for care coordination. The array of services was described as "inadequate" and "not child and family centered". There was a need for improved training and staff development. There was lack of resources and funding for services (Implementation Plan, 1995).

After the Felix consent decree, the system has improved and the state has been making progress in reaching the Felix benchmarks according to the Felix Monitoring Project report. However, Eric Seitz, one of the two attorneys representing Jennifer Felix in the 1993 lawsuit, expressed that not much has changed in certain areas in Hawaii and the problems of the "old system of care" still exist today. He pointed out the problems of

inadequate evaluation of disabled students on the Big Island, where student evaluations were left incomplete in order to meet the timeline, the poor services in Molokai, and a continued statewide shortage of qualified employees. He cited a Felix Monitoring project report on Molokai that showed only 11 % of children on Molokai receiving acceptable implementation of supports and services. He cited the 1999 figures, which shows the department is short 468 fully qualified special education teachers (Keesing, A., The Honolulu Advertiser, November 16, 1999, B1).

The State's Obligation under the Felix Consent Decree

The Felix consent decree stemmed from a 1993 class action suit by Jennifer Felix and six other children against the state for failing to provide adequate education, mental health, and other services to schoolchildren with disabilities. The Felix consent decree is a settlement agreement as a result of the 1993 class action lawsuit, Felix vs. Waihee. Under the Felix consent decree, the state, mainly the departments of Education and Health, had until June 30, 2000 to better identify eligible disabled children who also needed mental health services and to provide appropriate services by treating and educating these children in a "least restrictive environment." The Felix consent decree required the State of Hawaii to seek out "Felix-class" children who are in need of services, to provide timely and adequate intervention, and to deliver services in home, school, and community-based settings (Implementation Plan, 1995). The Felix class children are to be provided with free appropriate public education as required under IDEA and Section 504. The Felix consent decree also specified that the state must develop additional services, programs, and placements as needed and required for the

Felix-Class children. This required the new system be culturally sensitive, family and child-centered, and be provided in the least restrictive setting for the individual and the family. Therefore, the State of Hawaii was required to create a system of services, programs, and placements following the principles of the Child and Adolescent Service System Program (CASSP) for the Felix Class children to correct the systemic failure (Keesing, A., The Honolulu Advertiser, June 27, 2000, A-8). The Department of Education was required to submit to the court monitor "the provisions to streamline the process" for teachers to refer children for further evaluation (Barayuga, D., The Star-Bulletin, June 16, 1997, A-4).

The state was given seven months to draft an implementation plan to establish a system of care that was to be fully implemented by June 30, 2000. The final version of the implementation plan was approved on October 31, 1995. If the state accomplished the tasks in the approved implementation plan and satisfied the court by meeting the compliance standards by June 30, 2000, then the court's jurisdiction over the state will be terminated. If the state failed to meet June 30, 2000 deadline, then the court would takeover of the special education program and fine the state up to $25,000 a day. Although the Constitution gives the state the power to manage their own affairs, there is also the supremacy clause that can overrule that right if the state failed to meet the Felix consent decree (Keesing, A. The Honolulu Advertiser, November 16, 1999, B1).

Less than a year after the approval of the final implementation plan, the state was behind in meeting the scheduled deadline. On May 2000, the state was found in contempt for failing to comply with the Felix consent decree by June 30, 2000. In the document submitted to the court, the state attorneys requested for an extension of the

deadline to December 31, 2001 and explained that "anything less (than 18 months) could result in serious negative impact on the children and their families by jeopardizing the ability of the system to provide appropriate and adequate services" (Keesing, A. The Honolulu Advertiser, June 27, 2000, A8). The departments of Education and Health proposed a plan that required an additional $34.4 million on top of the given budget allowance to reach federal compliance by December 31, 2001 (Keesing, A., The Honolulu Advertiser, July 5, 2000, B1). While both departments are lobbying legislators for money to reimburse for special education, the $34.4 million plan must come out of their existing budgets (Nakaso, D., The Honolulu Advertiser, August 3, 2000, B1, B4).

The proposed $34.4 million plan called for increased staffing, free tuition for trainees, and bonuses and incentives for special education teachers. The plan included money for supplies, clerical and classroom support, more opportunities for training teachers, and moving some special education employees to a 12-month position. It also would require the judge to use his power to circumvent established procurement procedures, union contracts, and state law.

Judge Ezra granted the extension request to December 31, 2001 for the state to reach full compliance (Kua, C., The Star-Bulletin, August 2, 2000, A1, A8). Based on the court monitor Ivor Groves's recommendations, federal Judge David Ezra granted an 18-month extension for the Department of Education and Department of Health to achieve and sustain compliance to meet the Felix consent decree. Judge Ezra's court order detailed the following conditions:

(1) By June 30, 2001, the state must reach the level of substantial compliance by substantially having all capacities, resources and infrastructure in place

to serve all Felix Class children. Three-fourths of the school complexes must be in compliance (Kua, C., The Star-Bulletin, August 2, 2000, A1, A8). The reports from departments of Health and Education should show that no child remains without a specified service or appropriate alternative placement for more than 30 days. All plans and benchmarks for building capacity and certified teacher retention and recruitment must be completed (Nakaso, D., The Honolulu Advertiser, August 3, 2000, B1, B4).

(2) By December 31, 2001,"all complexes and associated family guidance centers will have demonstrated consistency of performance. Consistency will be demonstrated by achieving the 85 percent compliance level on the monitor's service testing review process for both the school-based services and for children with serious emotional and behavioral disorders requiring more intensive treatment services along with their educational services." (Knudsen, G., News Release, August 2, 2000, 1, 2)

(3) To eliminate court oversight, the state must show that it can sustain and maintain necessary services and personnel resources for 18 months following December 31, 2001 (Kua, C, The Star-Bulletin, August 2, 2000, A1, A8). Quarterly reports must be submitted to the court on the results of quality assurance reviews, including ongoing service testing and related quality assurance activities. The reports should also include achieved results and maintenance of services and personnel resources (Knudsen, G., News Release, August 2, 2000, 1, 2). The court-appointed monitor "will track the approximately 100-150 class members residing on Molokai to

determine whether they are receiving the services that are identified in their individual plans" (Nakaso, D, The Honolulu Advertiser, August 3, 2000, B1, B4).

Judge Ezra extended his jurisdiction over the case for 18 months after the December 31, 2001 deadline saying, "I want to make sure this doesn't fade from public view. Long after this court releases jurisdiction over this matter, it's going to be up to the public to keep the pressure on to make sure we don't slip and slide back to the point where we have another case filed" (Nakaso, D., The Honolulu Advertiser, August 3, 2000, B1, B4). By December 31, 2001, if the state failed to reach compliance, U.S. District Court Judge David Ezra could appoint a receiver to take over the special education system and divert any federal money coming into the state into special education (Keesing, A., The Honolulu Advertiser, January 20, 2001, A8). The state could also have to face fines of up to $100,000 a day (Keesing, A., The Honolulu Advertiser, May 24, 2001, B1).

The Felix Implementation Model: New System of Care

The new system of care was envisioned to be customer responsiveness focusing on optimizing results. Goals were set to achieve incremental improvements in service capacity and performance. The new system of care would consist of locally based components of a statewide public and private system of care operating within a common policy framework. Service plans will be coordinated and unified and will reflect needed

services for a child and family regardless of availability. Family partnerships at all levels of involvement are encouraged. Staff and resources will be made available and flexible. The characteristics desired in the new system of care are more local participation in all aspects of planning, implementing, and modifying services, building the capacity of local communities to plan and effect the quality services, increased flexibility in the use of funds, and better coordination of services (Implementation Plan, 1995).

The goals under new system of care are to increase appropriate services, reduce time to access these services, improve family involvement and support, increase school attendance, improve level of functioning, reduce behavioral symptoms, reduce use of restrictive options, reduce out of home placements, reduce out of community placements, and improve satisfaction of students, parents, teachers, and providers (Implementation Plan, 1995).

The required components in the new system of care are (a) services for prevention, screening and referral, early identification, and intervention; (b) strengths and needs-based assessment; (c) individualized service plan for child and family; (d) service coordination and implementation; (e) resource development and networking with continuous monitoring and change; (f) vocational services such as vocational assessment and supported employment; (g) recreational services such as after-school care and special projects; (h) other related services (i.e. transportation). With the new and expanded interagency prevention, intervention, and transition services, the student's needs are addressed at an early stage. There are also support services for all DOE and DOH personnel, service providers, community resources, and parents and family members to facilitate open communication and on-going feedback among families, caregivers, and

care coordinators to assist them in their roles. In addition, the system of care must be responsive to create additional services, programs and placements as the need of the Plaintiff require (Implementation Plan, 1995).

The Cost of Implementing the Felix Consent Decree.

Under the federal law, Individuals with Disabilities Education Act, and the 1994 Felix vs. Waihee consent decree, Hawaii public schools are required to provide free and appropriate public education to the students with disabilities. However, if the public schools are unable to provide appropriate education, the students can be sent to private facilities at the state expense. In 1997 Hawaii sent forty-two children with special needs to private residential treatment facilities on the mainland because the state was unable to accommodate the Felix-class children due to a lack of available mental health services. The state did not have long-term hospital and residential community placement facilities for "high-end" students who act out aggressive behaviors (Barayuga, D., The Star-Bulletin, June 16, 1997, A-4).

According to Robert Campbell, educational specialist with the special education section, the educational cost is cheaper on the mainland. The state spends an average of $120,000 a year per child. It costs the state approximately $2.3 million to provide mental health services in Hawaii compared to $1.2 million out of state. Hawaii's high cost of living expenses and services make placements on the mainland less expensive. The state saves more than $1 million by sending children with special needs to out of state facilities (Barayuga, D., The Star-Bulletin, June 16, 1997, A-4).

In the 1999 fiscal year, it was estimated that the educational cost for serving 8,488 disabled children under the Felix consent decree was $100 million. The Department of Health (DOH) also requested emergency budget of $31.9 million to pay for unanticipated increases in services to children who are emotionally disturbed. The Department of Health had $42.5 million budget deficits, which came from areas of general outpatient services, such as assessment, treatment and testing, as well as for residential and other services. According to Bruce S. Anderson, the Department of Health Director, the department needed more than $100 million for the Felix programs but they had to adjust to their base budget of $60 million. Furthermore, the 8,488 children served under Felix programs were expected to reach 9,406 by July 1, 1999. Bruce S. Anderson contributed this increase in Felix-Class population to the Felix program being very accommodating toward meeting a child's needs, and the state needs to take a strong stand on how those services are provided and who would be eligible for them (Omandam, P., The Star Bulletin, February 25, 1999, A4).

In the 2000 fiscal year, the Department of Education took on more responsibilities in managing the Felix programs. The Department of Education had a budget of $137 million for special education services but was asking for an additional $20 million (Keesing, A., The Honolulu Advertiser, June 27, 2000, A1, A8). According to Patricia Hamamoto, the former Deputy Schools Superintendent, it is estimated that the recurring cost for the Department of Education is about $25 million a year on top of the $120 million it already spent (Keesing, A., The Honolulu Advertiser, June 27, 2000, A1, A8). The Department of Health had $86 million for mental health services but was asking for an additional $18 million for emergency appropriation. Both departments' budgets were

for the 10,757 Felix-class children out of 22,803 identified special education students (Kua, C., The Star Bulletin, January 28, 2000, A4). However, the departments of Education and Health also needed $34.4 million more on top of the total amount of $261 million for the proposed plan they submitted to the court master to satisfy the court's demand and for the extension of the deadline to December 31, 2001.

In the 2001 fiscal year, the Department of Education asked for an increase of $64 million a year, and Department of Health asked for an increase of $18 million a year. However, the Legislature approved $43 million a year increase in the program funding for the Department of Education, and $8 million for the Department of Health. Despite the increase in budget allowance, both departments reported that the Legislature has left them about $30 million short a year in meeting Hawaii's obligation to nearly 12,000 special education students who require mental health services (Wright, W., The Honolulu Advertiser, April 30, 2001, B1, B2).

According to Governor Benjamin Cayetano's proposed state budget plan submitted on December 18, 2000 for the next two fiscal years, the Felix consent decree will cost the state more than $900 million. Under this proposed budget plan, the department of health, education, and human services will get more money (Arakawa, L., The Honolulu Advertiser, December 19, 2000, A-1). The cost for special education has risen to approximately 500 percent since the Felix case was filed in 1993, which was $68.6 million. The 2001 fiscal year is expected to cost $363 million ("Special Education Costs," The Honolulu Advertiser, January 7, 2001, A-16).

With the increasing high cost in Felix's expenditure, the Legislature has become increasingly concerned and is beginning to question the appropriateness of the services

provided. Department of Education and Department of Heath's Felix budget expenses and request prompted lawmakers to question the level of funding needed for Felix children as well as the program's potential for abuse as more parents demand their child receive help under the program (Omandam, P., The Star Bulletin, February 25, 1999, A4). However, U.S. District Judge David Ezra warned the Legislators and Governor Ben Cayetano that they have to come up with the money needed by June 2001 to improved special education even if it is at the expense of other state priorities or face the fines and the federal takeover of the special education program (Wright, W., The Honolulu Advertiser, April 30, 2001, B1, B2).

Children with disabilities are protected under the federal laws, Individuals with Disabilities Education Act (IDEA) and the Section 504 of the Rehabilitation Act of 1973. The Individuals with Disabilities Education Act (IDEA) requires the states to provide children with disabilities a "free and appropriate public education" that emphasize special education and related services to meet their special needs. Section 504 of the Rehabilitation Act of 1973 states that a qualified person with a disability cannot be excluded from any program receiving federal financial assistance (Higa, M., 1998). Although the state is experiencing financial problems, this does not relieve it of its obligations under the IDEA because there is no provision in the law that limits the state's responsibility to provide free appropriate public education (FAPE) to the amount of funds it receives. The state must provide whatever is necessary for a child with disability to receive a free appropriate public education regardless of whether the state has budgeted for the services or offers such services (Maloney, M., August 25, 1998).

Implementation Mistakes and Problems

In the process of reaching federal standards of compliance, the State of Hawaii was faced with many implementation problems and mistakes. Less than a year after the implementation plan was approved, the state already failed to meet a number of deadlines. The state did not focus on implementing the decree until three years into the five-year court order (The Honolulu Advertiser, February 28, 2000, A1). On March 27, 1996, the special master, Jeffrey Portnoy, found the state in non-compliance and required revisions to the implementation plan (Higa, M., 1998).

According to 1998 State Auditor Report, Marion Higa criticized that "the state lacks the leadership necessary to organize, direct, and coordinate Felix-related activities." Marion Higa felt that the state's efforts, which are primarily handled by the Department of Health and the Department of Education, remain uncoordinated and poorly implemented. According to the state auditor Marion Higa, the state's efforts lack clarity and focus, making the goals of compliance "a moving target." In 1997, the state hired a Felix operational manager, who is responsible for and has the authority over planning, direction, and administration of the state's activities to ensure compliance with the consent decree. According to Marion Higa (1998), the Felix operational manager is "authorized to direct, promulgate, and effectuate policies, goals, objectives, tasks, and timelines contained in the consent decree, the modified implementation plan, and any subsequent court orders." However, Marion Higa concluded in her 1998 State Auditor Report, "despite the appointment of the Felix operational manager, the state has not made much progress in meeting the requirements of the consent decree." It was also pointed

out that state departments lack the authority to enforce their policies upon each other despite the existence of Felix operational manager position.

In response to Higa's comment, Linda Colburn, the appointed Felix operational manager since 1997, expressed that she lacks the power to compel action, particularly with the Department of Education, which reports to the Board of Education and not the governor. However, the state auditor believes that the responsibilities and authority of the Felix operational manager agreed by the Office of Governor, Board of Education, Department of Education, and Department of Health, are sufficient to direct the changes necessary to achieve compliance. Rejecting the validity of the 1998 State Auditor Report, Linda Colburn provided a counterargument that "the interactions (between agencies) have improved in quality and frequency. There's far more collaboration than (the auditor) sees occurring" (Kua, C., The Star-Bulletin.com, December 15, 1998).

Auditor Marion Higa further added that the state has no "working" definition of a "Felix-class" child, which leads to open-ended entitlement. She stated that, "there is no limit to what people can get in terms of services, what kinds of services and for how long," (Keesing, A., The Honolulu Advertiser, January 20, 2001, A1). Marion Higa (1998) also reported that the interviewed staffs in DOE and DOH were confused about who can become the Felix class children. According to her report, although the DOE and DOH agreed that an eligible IDEA or Section 504 student who is in need of mental health services be classified as a Felix child, this agreement has not been translated into action because the staffs in both departments are still unclear about who can be eligible for mental health services. This lack of a working definition of the Felix class resulted in the

expansion of the court's jurisdiction and the difficulty of determining how much should be spent to maintain the level of spending required by the consent decree.

However, the court monitor Ivor Groves justified that, "the state has an obligation not only to serve Felix class members, but to identify, locate, and evaluate new children who may be class members or at risk of becoming class members." Since the state must consider other at risk children as part of the Felix class, the cost of the decree will continue to grow (Keesing, A., The Honolulu Advertiser, January 20, 2001, A1).

For the fiscal year 2001, 17 percent of the state's $1.2 billion budget will go to support only 12 percent of the student population ("Special Education Costs," The Honolulu Advertiser, January 7, 2001, A-16). With the increasing high cost of the Felix consent decree, lawmakers questioned if the state is making it too easy for children to get special education services and if schools are being influenced by lawyers and advocates to deliver more services than are necessary. Deputy Attorney General Russell Suzuki acknowledged that some schools are intimidated by medical experts and lawyers and have granted unnecessary services to Felix-class students. He suggested that more training should be provided for the teachers and principals so they can make the right decisions (Keesing, A., The Honolulu Advertiser, January 5, 2001, B-4). Paul LeMahieu, the former School Superintendent, also attributed the problem to over-diagnosis by school staff and the need for more training to make the correct diagnoses and recommend the best treatment (Keesing, A., The Honolulu Advertiser, January 20, 2001, A1, A8).

On the contrary, the state auditor attributed the problem of the inflated Felix budget to the state's inefficient and ineffective system of care with a complex

accountability structure. The auditor's report pointed out that the inconsistent cost in reporting is due to the Department of Education mixing costs for Felix-class children with those for other special education children. According to Higa, "when all other services and special education categories are put under the name of Felix, then you're implying that anything and everything that people want must be funded, and that's not so" (Keesing, A., The Honolulu Advertiser, January 20, 2001, A8). She expressed that, "the amount actually reported by the education department is misleading." She gave an example of a report submitted for FY 1996-97, which showed that only $33.4 million (20 percent) of the $167.7 million reported as Felix class expenditures were used for providing services to the Felix class. According to Higa, the $33.4 million was an inflated number and included other non-related Felix programs such as the A+ after-school program. However, Ivor Groves, court-appointed monitor, explained that in 1994 the state decided it could not fix Felix without fixing all of special education; therefore, it is difficult to separate the Felix costs from other special education costs.

Furthermore, according to Doug Houck, the department head of the DOE special education program, the federal government has not provided the money it promised to help enforce its special education law. He said that the consent decree and federal law requires Hawaii to meet the needs of all special needs students, not just those in the Felix class (Keesing, A., The Honolulu Advertiser, January 20, 2001, A1, A8). Former Superintendent Paul LeMahieu added that Hawaii is only reaching the national averages in spending and identification. It only spends 14 percent of its education budget on special education compared with a national average of 24 percent. He explained that while the money is not solely for Felix-class children, those with mental health services,

the state can not address Felix-class students without addressing all other special education students who are also protected by federal law (Keesing, A., The Honolulu Advertiser, January 5, 2001, B-4). He described the current situation as "the system that's gone haywire." Therefore, it's not about fixing Hawaii's special education program, "but about building an array of services available to all children whenever they need them" ("Patrick," The Honolulu Advertiser, January 5, 1999, A6).

However, some advocates for children with disabilities disagreed with the inclusion of the Comprehensive Student Support System (CSSS) in the Felix consent decree's budget. CSSS exists to align state agencies to provide array of services to support to all children, not just for Felix-class children (Brown, L., The Honolulu Advertiser, January 14, 2001, B-1).

According to Marion Higa (1998), CSSS was developed prior to the consent decree by the DOE initiatives in attempt to address the needs of the Felix Class as a normal part of services provided to all students. Comprehensive Student Support System is a school reform initiative with a mission "to provide all students with a support system so they can be productive and responsible citizens." CSSS focuses on ways to improve and strengthen instruction, management, and student support. It was intended to integrate all school activities and services to build a more caring environment to support all students. With the inclusion of CSSS in the Felix implementation plan, the Department of Education's goal is to eliminate the need to continue with the consent decree. According to Higa, "although the CSSS is now a part of the Felix implementation plan, the system was created before its incorporation into the implementation plan and is intended for purposes beyond helping the Felix class." She felt that the inclusion of

CSSS in the Felix implementation plan has not only affect the educational policies for the non-Felix special education and regular education students, but also would give the federal court, the plaintiffs, the court monitor, and other non-Department of Education parties the "significant control" over the direction of the entire public school system (Higa, M., 1998).

Furthermore, Higa added that the state departments utilized different and inconsistent cost reporting methods. The Department of Education (DOE) and Department of Health (DOH) reported inconsistent information on the quarterly maintenance of effort reports. According to the state auditor, Department of Health reported only general funds; whereas, the Department of Education reported all sources of funding. She attributed this reporting discrepancy to the DOH not wanting to be liable for federal funds if the funds were not received. Thus, DOH did not report all of its funding related to the Felix consent decree because funding for the Felix related programs are protected by maintenance of effort requirements. Marion Higa theorized that DOH's reluctance to identify programs as Felix related has been an attempt to slow the expansion of the Felix class and the growth in obligations that the consent decree places upon the state. Since other departments such as Department of Human Services (DHS), Department of Accounting and General Services (DAGS), Judiciary, Office of the Governor were not named in the Felix lawsuit, they are not required to track the spending on Felix-related costs (Higa, M., 1998). It is impossible for them to determine the actual cost for serving Felix class children.

Ivor Groves, court-appointed monitor, also concurred with Higa's findings that the state's "implementation problems (that) include fragmentation in leadership, lack of

urgency, poor interagency coordination, lack of consistency in performance at the child level, delays in hiring, system needs placed over children's needs and weak problem-solving capacity" ("Patrick," The Honolulu Advertiser, January 5, 1999, A6).

The "fragmentation in leadership" applies to the change in state leadership from Governor John Waihee to Governor Benjamin Cayetano and the change in leadership in the Department of Education and Department of Health. Since the signing of the 1996 Felix v. Waihee implementation plan, the director of the Department of Health was changed from Lawrence Miike to Bruce S. Anderson, and the superintendent of the Department of Education was changed from Herman M. Aizawa to Paul LeMahieu, and just recently to Patricia Hamamoto.

According to state auditor Marion Higa's report, the state's lack of independent oversight has allowed for conflicts of interest and has developed a "culture of profit" (Keesing, A., The Honolulu Advertiser, July 14, 2001, A1, A6). The state is under investigation for the possible misuse of the education funds and the conflict of interest. In October 2001, former School Superintendent Paul LeMahieu resigned after admitting about his affair with Big Island Na Laukoa's owner, who he has awarded a $2.8 million Felix contract to provide services for the Felix class children (Ishikawa, S., The Honolulu Advertiser, November 4, 2001, A27, A33). More than $4 million allocated to regular education was used for Felix special education projects. Ivor Groves, appointed by the federal judge to monitor the state's progress to reach compliance, was also questioned for a conflict of interests in hiring his own Florida based company, Human Systems and Outcome Inc., to design the Felix service testing, a tool used for measuring school compliance (Ishikawa, S., The Honolulu Advertiser, November 4, 2001, A27, A33).

According to state auditor Marion Higa, "the dollars appropriated for services are funding another bureaucracy, there are fewer services provided to Felix class students than prior to the decree, and resources allocated for services and support personnel are not reaching the school level" (Higa, M, 1998). In a written response to Higa's report, Paul LeMahieu, Bruce Anderson, and Attorney General Earl Anzai rejected the report calling it "flawed" because the consultants and auditor were not sufficiently qualified to review the areas involved (Keesing, A., The Honolulu Advertiser, January 20, 2001, A1, A8).

The State's Current and Future Challenges

The Felix Consent Decree originally allowed the State within six years to implement the new system of care to meet federal compliance by June 30, 2000. With the unanticipated implementation problems, the state is going on its seventh year as it continues to implement the agreements written in Felix consent decree. On November 30, 2001, the state had made enough progress tc satisfy the federal court, and U.S. District Judge David Ezra announced:

> The state has made tremendous progress and we no longer need to be embarrassed about Special Education in Hawaii. The state and all those who worked everyday to make this happen should be rewarded. And keeping this in mind, the court will not appoint a federal receiver to take over the educational system. Also, there is no justification that a receiver should be appointed.

Although the state has overcome major hurdles in compliance with the court, there are some current and future challenges that the state has to face. The current challenges include recruiting and retaining certified teachers, to get ISPED (State IDEA and 504 database) fully operational, and to ensure that school complexes continue to pass their annual service testing.

Under the Felix consent decree, the state is required to address the shortage of special education teachers. The state was under the court order to hire hundreds of special education teachers. Like other states, Hawaii has also created partnerships with universities to boost the number of graduates with special education degrees. It was reported that the shortage of special education teachers was so great that some districts even lowered their certification standards for special education teachers to fill the gap (Apgar, S, The Honolulu Advertiser, December 10, 2000, A1, A8). The special education teacher's shortage has caused districts to compete against one another and forced schools to hire teacher without proper credentials. The challenge was finding competent and caring educators who are knowledgeable of special education laws and able to work with different modalities to meet the variety of special needs.

However, some parent advocates for special needs children disagree with the court order to recruit more special education teachers. They expressed that most special education students are mainstreamed into the regular education classes. Thus, the focus should be on training all the teachers to accommodate the different learning styles in the classroom instead of hiring more special education teachers (Brown, L., The Honolulu Advertiser, January 14, 2001, B1).

When the state was unable to recruit through its own efforts, the federal court approved a plan and ordered the hiring of a mainland recruiter that would use financial incentives to attract teachers. Mainland recruited teachers are offered higher salaries and incentives to teach in Hawaii. Faced with the burden of heavy workloads and overcrowded classrooms, Hawaii teachers were already experiencing burnout. This decision has angered many local teachers who have worked for years and make less than

many of the recruited mainland teachers (Apgar, S, The Honolulu Advertiser, December 10, 2000, A1, A8).

In September 2000, the Department of Education hired a mainland recruiting company, Columbus Education Corp., with a $37 million contract to recruit 332 special education teachers to Hawaii (Apgar, S., The Honolulu Advertiser, December 10, 2000, A1, A8). Columbus Education Corp, originated from a medical services background, has mainly recruited doctors, psychologists, nurses, speech pathologists, and occupational/physical therapists. Although the Columbus Education Corporation has no proven record of hiring teachers on a large scale, it was a priority for the Department of Education to address teacher recruitment.

Focusing on recruiting teachers for the neighbor islands, the state reduced the number of teachers needed to 131. Three months after the contract was signed, Columbus Education Corp were only able to recruit 4 of the 131 needed special education teachers, which was far below the 15 it had projected to hire. Under the contract, the company gets paid based on the number of teachers it recruits. Experts say that 97% of school districts in the nation are struggling to hire special education teachers. According to one report to Congress, about 10% of the special education jobs in the country went unfilled for the year 2000, and of those jobs filled, about 30% are held by under-qualified personnel (Apgar, S., The Honolulu Advertiser, December 10, 2000, A1, A8).

According to benchmark 48 of the Felix consent decree (paragraph 110), the Department of Education must have 90% of the teachers certified with no less than 75% licensed or certified per school by March 31, 2002. The Department of Education has fallen behind in hiring and retaining certified special education teachers. The DOE was

supposed to have 85% of its special education teachers certified by November 1, 2001. Currently, 75.5 % will be certified by the beginning of year 2002. Shelby Floyd, one of the lawyers for Jennifer Felix in the 1993 Felix vs. Waihee lawsuit, said that the state's estimate of 75.5% certified teachers is based practically on employment offers that have been extended, not the actual number of certified teachers in the classroom (Hiller, J., The Honolulu Advertiser, November 7, 2001, B1, B4). She visited Molokai with Eric Seitz and expressed that it will cost additional money for more certified special education teachers, more speech pathologists and other services to bring Molokai into compliance (Kua, C., The Star Bulletin, January 28, 2000, A4). A lack of qualified staff, from special education teachers to speech pathologists, has been one of the biggest hurdles for the State to meet compliance. Statewide, there is a shortage of certified special education teachers, speech pathologists, and other crucial positions. With a national shortage of special education teachers, Hawaii struggles to attract licensed special education teachers, and each year the state comes up short by as many as 100 (Keesing, A, The Honolulu Advertiser, June 27, 2000, A1, A8). According to Eric Seitz, the teacher shortage crisis in Hawaii is severe because "we started first of all with a shortage of special education teachers. Then we doubled the special education population as a consequence of this lawsuit and that created an even greater number of vacancies." He reported that about $1 million a year goes to the University of Hawaii for designed program to graduate special education teachers in four rather than five years. Felix money is also used to recruit teachers with teaching degrees to earn special education credentials. Unfortunately, special education has a reputation for low pay and a high burnout (Apgar, S, The Honolulu Advertiser, December 10, 2000, A1, A8).

Although the State's additional $34.4 million plan for the year 2000 to reach compliance by December 31, 2001 was intended to address the shortage of certified employees (Keesing, A., The Honolulu Advertiser, June 27, 2000, A1, A8), Karen Ginoza, president of the Hawaii State Teachers Association, is not confident that it will address the issues of recruitment and retention. She attributed the difficulty of recruitment and retention of special education teachers to the lack of personnel support and the heavy workload (Kua, C., The Star-Bulletin, May 29, 2000, A1, A8). According to Karen Ginoza, there is a need for a system change to respond to recruitment and retention concerns to alleviate the frustrations experienced by special education and regular education teachers by providing additional personnel support and less paperwork (Kua, C., The Star-Bulletin, May 29, 2000, A1, A8). Special education employees have begged the Board of Education for relief from the deluge of work that has resulted from the growing number of special education students and new procedural requirements (Keesing, A., The Honolulu Advertiser, June 27, 2000, A1, A8). The increased in caseloads and large class sizes prevent the teachers from giving each child the necessary attention. With the new procedural requirements came more paper work that is difficult to finish during the work hours.

According to the 1999 Felix Monitoring Project report, certified staff fills only ~~61~~% of the positions. The challenging areas are Molokai, Waianae, Central Maui, and Ka'u. One of the biggest challenges is to attract enough qualified teachers. According to court-appointed monitor Ivor Groves, there is a nationwide shortage of qualified professionals to care for the children with special needs, particularly certified special

education teachers, speech pathologists, autism specialists, and trained educational assistants (The Honolulu Advertiser, February 28, 2000, A1).

In addition to the teacher shortage crisis, there is also the problem of insufficient facilities to accommodate the increase positions mandated by the Felix consent decree. The current school infrastructure cannot accommodate for the increase in staffing. Some schools have an increase in staff as much as 22% has forced some students, teachers, and other workers into converted closets, dressing rooms, patio, even trailer, as the school struggles to find enough room to accommodate new programs deemed essential by the Felix decree (Aguiar, E., The Honolulu Advertiser, November 25, 2001, A27, A32). Lack of space makes it difficult for teachers and staff to service the student, which raises the concern about the effect of the learning environment on the quality of student learning. A letter to the court monitor, Ivor Groves, detailed the continued special education problems in Maui. It was brought to the court monitor's attention that children are being seen for mental health services in the hallways or on the stairs, and there is no increase in the number of special education teachers (Kua, C., The Star Bulletin, May 29, 2000, A1, A8).

One of the most important outstanding benchmarks on Felix consent decree required ISPED system to be operational and contain accurate data by September 2000. The user managers in each school are responsible for maintain accurate records of all students who are IDEA eligible and 504 eligible, and the students in the evaluation process in the database system. However, due to the technical problems of computer viruses and bugs, ISPED was temporarily put on hold for one year when it first came out in September 2000.

PART II

The Impact of the Felix Consent Decree on the State Departments

The Creation of Programs/Positions for Felix Implementation

To oversee the state's progress in compliance with the consent decree, the court appointed a special master, Jeffrey Portnoy, to determine whether the state is in compliance, to resolve disputes between parties, and to determine how much the state must pay for the services provided by court appointed individuals (Higa, M., 1998). The court created a Felix Monitoring Project, a nonprofit organization funded by the state, and appointed a court monitor and the technical assistance panel to be apart of this monitoring project. The appointed court monitor, Ivor Groves, is responsible to write progress reports, make recommendations to the court, and address complaints and concerns. The court also appointed a technical assistance panel, which consists of the monitor and two other members, Lenore Behar & Judith Schrag, to provide assistance in the design of the system of care and the formulation of the implementation plan. The panel members also conduct studies and serve as consultants to the state departments. The project members are authorized to hire consultants to assist with training, evaluation, and professional services to conduct case studies, to assess residential facilities, and to provide other services and assistance (Higa, M., 1998).

In October 1996, the Felix Complaints Resolution Office was created to serve as an interagency resource to independently investigate complaints pertaining to educational and mental health service issues. Complaints resolution staff assess the accuracy of the complaints, offer assistance, and recommend corrective actions. It is a less formal alternative to a due process hearing (Higa, M., 1998).

In May 1997, the Department of Education and Health funded the Felix Staff/Service Development Institute to increase knowledge and skills of agency staff, families, and other stakeholders regarding the service needs for special education and mental health services (Higa, M., 1998).

In 1997 the position of a Felix operational manager was created and filled by Linda Colburn, who is responsible for overseeing the Community Children's Council Office, and 16 local Community Children's Councils, and the State Children's Council. These offices are created to integrate community input into the development of the system of care (Higa, M., 1998).

Collaboration Among the State Departments

Working together in a partnership under the Decree, the Department of Health and Department of Education play major roles in providing educational and health services in the "new system." They are responsible for providing preventive and early intervention, diagnostic, consultative, rehabilitative, and treatment services for children and adolescents, including eligible infants and toddlers. They are also required to provide training and education to school personnel and parents about the children's educational, mental, and emotional problems (Implementation Plan, 1995). They are responsible for delivering and ensuring the delivery of the arrays of mental health related services, which include prevention, early intervention, crisis intervention, outpatient services, day treatment, intensive home-based services, alternative families, intensive residential services, and acute hospitalization.

Under the new system, Felix Consent Decree specified the Department of Education and Department of Health to be the main responsible agencies, but emphasized the need for cooperation and partnership with other state agencies that also provide services for the Felix class children. Department of Human Services, the Department of Accounting and General Services, and the Judiciary's Family Court are some of the agencies that are also involved in assisting the Department of Education and Department of Health in fulfilling the responsibilities.

The Department of Human Services (DHS) provides placement, support, and health care to children and adolescent in foster care arrangements, child protective services, and vocational rehabilitation services. DHS is also required to provide health care for indigent children and custody services to law violating youths, and welfare assistance to families (Higa, M, 1998).

The Family Court provides some individualized service arrangement for troubled adolescents. The Office of Youth Services (OYS) provides delinquency prevention services, placement, and other services to adolescents under its custody. The probation officers can refer children under their care for Felix eligibility determination, participate in Individualized Education Plan meetings, and service planning. The Department of Accounting and General Services (DAGS) provides transportation as a related service to Felix class children who require such service under the IDEA (Implementation Plan, 1995)

The Department of Education is required to provide educational services to children and serves as the central agency for the administration of statewide educational policy, interpretation, and development of standards for compliance with the state and

federal laws. The Department of Education has the responsibility of meeting the requirements of IDEA and Section 504 federal laws. Felix consent decree also requires the Department of Education to assist children who need special services by overseeing the development of special facilities, and addressing their instructional, therapeutic, and training needs (Higa, M., 1998).

The Department of Health is responsible for the provision of occupational therapy, physical therapy, school health, mental health, and psychological and medical services for children attending public schools. The Child and Adolescent Mental Health Division of the Department of Health is required to provide the following mental health services: (a) preventive health services; (b) diagnostic and treatment services; (c) treatment and rehabilitative services.

Since July 1, 2001, the Department of Education has taken over the responsibility of management in providing mental health services for the Felix class population. The high levels of intensive services still remain with the Department of Health. However, the Department of Education is expected to assume complete responsibility for providing mental health services for all levels, including the high intensive, during the 2002-2003 school year. Under Bruce Anderson and Paul LeMahieu's proposed vision for " a statewide school-based system of care," the Department of Education manages the less intensive services to ensure that needed services are provided in a timely, effective and cost-efficient manner. Under this school-based system of care, the Department of Education staff can serve less serious cases while the Department of Health focuses on youths with more intensive needs. According to the Department of Health Director Bruce Anderson and the former School Superintendent Paul LeMahieu, one of the

problems faced in providing mental health services is that "pockets of children have been given an array of services that are clearly not sustainable over the long term, while still others wait to be brought in the compliance range." (Anderson, B., & LeMahieu, P., The Honolulu Advertiser, March 19, 1999, A-14). Thus, the only way to ensure that all children with mental health needs will be properly served is to develop a system of care that most effectively uses state resources.

According to Bruce Anderson and Paul LeMahieu, the problems with current mental health system is that private service providers are the "major part of the team that develops individual education plans for Felix children and are involved in determining the level of mental health services in the plan." They pointed out that "while providers bring important professional experience and insight to the team, having them play a key role in the referral process as well as in the delivery of services is a conflict that needs to be eliminated." They support "more intensive training" to ensure that the recommendations made by the individual education plan teams are best for the child, and the IEPs "should be carefully developed to specify appropriate interventions, measurable objectives and clear outcomes" (Anderson, B., & LeMahieu, P., The Honolulu Advertiser, March 19, 1999, A14). They believed that establishing a school-based services program within the Department of Education would provide more consistent and ongoing services that will be more responsive to the students' needs.

On July 1, 2001, a transition in program and service delivery had taken place and the Department of Education assumed more responsibilities in providing for the Felix-Class children. The Department of Health is no longer involved in managing and providing less intensive services, focusing on more intensive care for children in

residential treatment facilities. Thus, the Department of Education takes on the responsibility to manage and provide school-based services to students in schools and in the Adolescent Day Treatment Programs (ADTP). The shift in responsibility has allowed the Department of Education to move away from a "medical model" to an "educational model." Based on the IDEA statute, the Department of Education is only required to provide "counseling services" and not "mental health services." Under the school-based services program, students receive services from professionals such as guidance counselors, social workers, school nurses, and psychologists while they are in school. Therapy services that were previously provided by the local contracted agencies were transitioned to the Department of Education's School-Based Behavioral Health (SBBH) personnel. The behavioral health model is similar to a psycho educational model, which combined education and mental health. According to the memo Strengthening Our System of Care written by Paul LeMahieu and Bruce Anderson, changes to the provision of services were necessary to meet the Felix children's needs within the context of the school environment. Under the dual system, the Department of Education shared the responsibility of providing mental health services with the Department of Health. In November 1999, the Department of Education managed 77% of the Felix class children, while the Department of Health maintained control over intensive levels of mental health services. Although 77% of the kids have been turned over to the DOE for in school services, the DOH budget/staff have not been reduced (Geller, L., The Honolulu Advertiser, January 12, 2001, A18). Is it better to have all educational and mental health services for students provided in one agency versus the dual system in Hawaii?

Unfortunately, the state auditor found that a "model" system does not exist and there is no research available to support either model.

Prior to the shifting of management of services, the Department of Health and the Department of Education experienced some problems with the contract service providers. Contract service providers are private company/agencies who are willing to participate with the Child and Adolescent Mental Health Division (CAMHD) in providing mental health services to Felix class children. According to the CAMHD's Clinical Standards Manual, the contract service providers/agencies assume all the responsibilities for the quality of the services provided by their employees or subcontracted providers. Contractors were required to submit monthly reports of quality monitoring of the student's progress toward the treatment goals. They were expected to initiate and provide services in a timely and consistent manner (Clinical Standards Manual, 1999).

Service testing reports, that measures compliance, indicated that there is a lack of communication among agencies that service the child and the "teams do not work together effectively." Other challenges include the lack of technology that makes the system inefficient and cultural barriers account for parents not to following up with treatment.

Under the dual system, management and monitoring of the contracted service providers were challenging. According to the State Auditor Marion Higa, DOE and DOH did not have an effective system for monitoring the quality of services. When interviewed, the DOE and DOH staffs have expressed concerns about the quality of services provided (Higa, M., 1998). Some reported that providers conducted inappropriate activities. There were concerns about contracted service providers not

adhering to the clinical standards manual. The quality of services delivered was also questioned when students required services for an extended period of time. There were complaints reported regarding the lack of communication between the contracted providers with the school staff and the Department of Health care coordinator. There were also complaints of the timeliness in delivering services.

Although the Clinical Standards Manual required that the contracted agencies submit progress reports of their services, school personnel complained the difficulty of obtaining these reports. There are also complaints about contracted agencies not honoring Hawaii's special education law and regulation of the 60 days timeline. There were complaints that schools did not receive assessment reports until a few months later. There were also complaints about the conflict of interest when contracted therapists request for specific services at the IEP meeting, and tend to continue services indefinitely, especially when they have a great influence over the parents. There were also complaints that the treatment goals are not relevant to the classroom. The teachers reported that therapists refused to share information about student's progress with teachers. School level staffs have raised concerns of the effectiveness of the therapy services provided when the student's behaviors do not improve after many years receiving therapy. Under the dual system, the Department of Education must rely on the Department of Health to be diligent in contract formation and management.

Besides the lack of control over the quality of the services received, the roles and responsibilities of the staff members in the DOE and DOH are unclear. According to the State Auditor Report, the term "care coordinator" is not clear and subject to misinterpretation. The joint policy of the DOE and DOH states that choosing a care

coordinator is a team decision based on factors, which include family preference and knowledge of the child. However, in reality care coordinators are usually special education teachers or Family Guidance Center workers. While DOE and DOH claim that anyone can be designated care coordinator, both DHS and Family Court have written policies that their staff will not serve as care coordinators (Higa, M., 1998).

Prior to the 1993 Felix vs. Waihee lawsuit, the State Auditor's 1993 report found that the departments had no collaborative process, and recommended that they strengthen their collaboration and clarify their responsibilities. Based on the State Auditor's recommendations, the Department of Health and Department of Education started to form a task force to hold monthly interagency meetings. However, it was the Felix consent decree that the collaboration process between both departments was stimulated and implemented (State Auditor Report, No. 95-10, March 1995). The consent decree requires a collaborative effort between the DOE and DOH and other state and private agencies and individuals that provide related services.

The Department of Education was required to collaborate with the Department of Health in identifying children and youths in need of mental health services, and the Department of Health was required to provide treatment for these children. In 1993, mental health experts estimated that about 33,600 children in Hawaii required mental health treatment, but only about 3,300 to 6,600 students were receiving mental health services. In 2001, the number of students with disabilities receiving mental health services has increased to 12,000 (Wright, W., The Honolulu Advertiser, April 30, 2001, B1, B2).

PART III

The Impact of the Felix Consent Decree on Hawaii's Public Schools

Impact on Regular Education

The Felix consent decree affects not only affect special education program but also Hawaii's regular education program. The Felix consent decree affects the funds available for regular education programs. Under the Hawaii's general funds system, the state is allowed to cut into other resources and programs as necessary to meet the Felix consent decree's demands. Russell Suzuki, Deputy Attorney General, explained that "if the Legislature does not approve the necessary funds to the departments, the obligation would still exist, and the money might have to be taken from other educational programs" to help improve special education. Former Superintendent Paul LeMahieu has admitted that the Felix consent decree is having at least an indirect effect on the money available for regular education ("Special Education Costs," The Honolulu Advertiser, January 7, 2001, A-16). With the increasing Felix cost, the legislative committee is investigating if state has used money designated for regular education to pay for special education mental health contracts. Chris Ito, DOE accounting division director, confirmed that the money designated for regular education was used for special education projects. $4 million allocated for regular education program was used for projects related to Felix decree (Ishikawa, S., The Honolulu Advertiser, November 4, 2001, A27, A33).

The lack of available funds to support regular education programs and activities affects the non-disabled students and regular education teachers. Some regular education teachers went as far as to file a grievance with the Board of Education alleging that the Felix consent decree has created a division among children. Regular education teachers

complained about the difficulty of controlling the disruption caused by the students with emotional disabilities in their classroom and providing an optimal learning environment for other students. They also complained about having to leave their students with substitutes because they are required by IDEA to participate in lengthy Individualized Education Plan (IEP) meetings for their special education students.

The 1997 IDEA Amendments mandated that "to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment, occurs only when the nature or severity of the disability of the child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily" (Jones, N.L., & Aleman, S. R., 2000). Under the IDEA and Felix consent decree, students with disabilities are to be placed in a "least-restrictive environment", which means more special education students mainstreamed in the regular education classrooms. Some regular education teachers reported that they did not receive the necessary training to cope with the student's special needs. Although students with special needs may require assistance of another staff in the mainstreamed regular classrooms, the shortage of staffing makes it rare to provide this type of support. Some teachers are puzzled by Hawaii's formula for calculating regular education class sizes, which does not count the mainstreamed special education students. With the lack of special education teachers, the regular and special education teachers are asked to take on more responsibilities to cope with a staffing shortage. Thus, teachers are faced with more paperwork, attending numerous special education meetings, and having to meet the

special needs of disabled children in overcrowded classrooms ("Special Education Costs," The Honolulu Advertiser, January 7, 2001, A-16).

Statewide public schools struggle to find space to accommodate the newly added staff, services, and programs of the Felix decree. As a part of the Felix consent decree's new system of care, many programs and positions became school-based programs and are accessible at the school-level. According the School-Based Behavioral Health model, school-based programs facilitate the timely delivery of services within the school. They support decision making by those who are knowledgeable about the child. They also support a transition from clinically based services to educationally based services. Some of the school-based programs are within the Comprehensive Student Support System (CSSS) such as English as Second Language Learners (ESLL), Gifted/Talented (GT), Primary School Adjustment Program (PSAP), School-Based Behavioral Health (SBBH), and Comprehensive School Alienation Program (CSAP).

Recently, since July 1, 2001, low intensive mental health services that were once managed by the Department of Health are now managed by the Department of Education. These services became a school-based program called School-Based Behavioral Health (SBBH). With the school-based programs, many positions are created and housed at the schools. Some of the newly added positions are the Complex CSSS Resource Teachers, SBBH team (that include psychologists, behavior health specialists, and social workers), Student Service Coordinator (SSC), PSAP aides, and CSAP teachers. As a result, students, teachers, and staff within the schools have to utilize any space they can find such as closets, dressing rooms, patios, cafeteria, stage, lounges, conference rooms, and even a trailer (Aguiar, E., The Honolulu Advertiser, November 25, 2001, A 27, A32).

Prior to the 1993 Felix vs. Waihee lawsuit, the Department of Education and the Department of Health were required under Hawaii Revised Statutes, Section 321-174 to share responsibilities in providing mental health services for *all* children who needed it (State Auditor Report, No. 95-10, March 1995). However, after the lawsuit, the Felix consent decree has outdated Section 321-174 and the focus has shifted to providing mental health services to only the Felix-Class population, who are disabled students eligible under IDEA and Section 504 and in need of mental health services. Therefore, students who need mental health services but are not eligible under Section 504 or IDEA are not eligible to receive the mental health services.

Implications on Procedural/Program Changes

The Department of Education has been experiencing several internal program changes within the past seven years since the implementation of the Felix consent decree. Implementing a system change for the State of Hawaii, which consists of 252 public schools, requires an extensive joint effort. As a result of the Felix consent decree, many programs have been added to support student services. Some of the main programs that have been implemented school-wide are the Comprehensive Student Support System (CSSS), Primary School Adjustment Project (PSAP), Comprehensive School Alienation Program (CSAP), School-Based Behavioral Health (SBBH), Integrated Special Education Database (ISPED), Standards Implementation Design (SID), and Parent-Community Network Center (PCNC). With every program, positions and branches within departments are created to carry out the programs within the school-level, district-level, and state-level. For example, the Student Support Branch was created to support

the Comprehensive Student Support System (CSSS), which is managed by the CSSS Implementation Specialist, who is supported by the Complex School Renewal Specialists, who are assisted by CSSS Complex Resource Teachers. They work directly with the Student Services Coordinator at each school in the coordination of the school-based and school improvement activities. The Student Service Coordinators are positions added to the school-level to ensure timeliness in the evaluation and coordination of service delivery to support CSSS.

The Comprehensive Student Support System (CSSS) integrates various existing services and programs into a comprehensive system that stresses prevention and early intervention of problems. The rationale behind CSSS is that when school-based supports are provided in a timely and effective manner, fewer students will require more complex or intense services (CSSS Operation Manual, 1998). Some of the prevention and intervention programs at the school-based level are the Primary School Adjustment Project (PSAP) and the Comprehensive School Alienation Program (CSAP). Under the Primary School Adjustment Project (PSAP), the counselors and PSAP aids design and implement effective intervention strategies to assist elementary children with academic achievement, to provide individualized attention, and an emotional support system. Additional teaching positions and alternative education courses are provided to support Comprehensive School Alienation Program (CSAP) within the secondary schools. CSAP is an intervention and prevention program focusing on the problems of school alienation and failure among students in the secondary schools. Under CSAP, learning options are provided to serve the needs of identified students through implementation of a Special Motivation Class (SMC) and/or an Alternative Learning Center (ALC).

The Felix Monitoring Branch was created to monitor Hawaii's progress toward compliance with the federal court by assisting schools to meet benchmarks and deadlines. Every year, school complexes are tested by the Service Testing Reviewers for their level of compliance. Service testing is designed to assess the progress of students with special needs and the services provided. It measures the student progress, service responsiveness, system effectiveness, parent satisfaction, and overall student and system performance.

A statewide, computerized database system called the Integrated Special Education Database was added as a result of the Felix consent decree. ISPED is an interactive, process driven database designed to maintain accurate data collection of the students with disabilities and to reduce the amount of paperwork used in planning and implementing appropriate services. The implementation of ISPED requires more positions such as the ISPED resource teachers to train the school staff, the ISPED Help Desks personnel to help with troubleshooting, the User Managers in the school to input and maintain accurate records, and technology specialists to fix the technical difficulties of computer bugs and viruses. Schools staff members were given laptop computers to implement and utilize ISPED by inputting Individualized Education Plan (IEP), Modification Plan (MP), and other records for the students in the Section 504 and special education program

In addition to the Special Education Branch, a Special Services Branch was added to each district with specialized resource teacher positions to assist schools staff members with cases involving the Felix-Class children. School-Based Behavioral Health (SBBH) is a school-level program, which was recently added since July 1, 2001, that replaced the

school-based mental health services. Under the School-Based Behavioral Health (SBBH) program, psychologists, behavioral specialists, social workers, and counselors provide counseling services to Felix-Class children in school. Currently, each district manages the SBBH program differently from one another. At the district-level, the SBBH program is managed and coordinated by the program manager, contract specialist, and medical personnel.

In addition to the changes in the programs and positions within the Department of Education, there are also changes made to the programming of service delivery and process. Prior to the Felix consent decree, the Department of Education utilized a "top-down" approach. The decision-making, service delivery, and paperwork process were handled at the state-level and/or district-level. There were not many programs that were managed at the school-level. Thus, the system of care was faced with many problems, and one of the problems was the responsiveness of services, which led to the 1993 Felix vs. Waihee class-action suit.

Prior to the Felix decree, the referral process was given a 100 days timeline. The Diagnostic team, which consisted of the psychological examiner, educational examiner, social worker, speech pathologist, and physical/occupational therapist, would have to conduct meetings at the schools to determine eligibility for special education services. The paperwork has become a burden for diagnostic teams, largely due to the need to coordinate mental health referrals. The diagnostic team was required to assemble information packets for the Department of Health, one for Family Guidance Center and one for the private provider. This requirement was in addition to district reports and special education certification reports that the team was required to complete. It was

recommended to the court that a more efficient system needed to be established to ensure that evaluations are completed in a more timely manner to assure that the services provided are appropriate. After the 1993 lawsuit, the Felix consent decree required a change in the referral process to seek services. The Department of Education shortened the referral process for special education services to 60-days timeline (Chapter 56, s8-56-5). Each school was assigned a Student Service Coordinator (SSC) to manage the paperwork of each student's case and coordinate the services for the students. Speech pathologists and social workers were transferred and housed at their assigned schools. Basically, the formerly known as "Diagnostic team" was broken apart and assigned to each school for a quicker response to timeline and service delivery. Every position and program is now made available at the school-based level for an easier access to services. The schools and staff members are now being monitored more closely under the scrutiny of the Court. Schools are held accountable for student performances and program success by submitting reports and evidence.

In the case Gerstmyer v. Howard Company Public School, the court ruled that the failure to evaluate and convene an IEP meeting in a timely manner constituted a denial of free appropriate public education (FAPE). Under the Felix consent decree, the Department of Education Felix response team was required to submit to the court monitor provisions to streamline the process for teachers and parents to refer children for evaluation. The state has developed a plan to shorten the timeline for evaluation from 100 days to 60 calendar days (The Honolulu Advertiser, February 28, 2000, A1). The process starts from the time the school receives a request for an evaluation. The request can be submitted orally or in writing. Under Hawaii Rules (Section 8-56-5), all requests

for an evaluation must be documented and within twenty days the parent must be informed by written notice on either a proposal or refusal to assess under Chapter 56 (IDEA) or Chapter 53 (Section 504). From the date that the school receives parental consent for evaluation, the school has to conduct assessments, to hold meeting to determine eligibility, and to develop a plan of services within 60 calendar days. Although federal law (IDEA) did not indicate what "a reasonable period of time" means, Hawaii Rules (Section 8-56-32) define a reasonable period of time as 60 calendar days, except when exceptional circumstances cause a delay. According Robert Campbell of the department's special education section, "it makes it easier for anyone with mental health needs to apply" (Barayuga, D., The Star-Bulletin, June16, 1997, A-4).

The 60-days timeline applies to all calendar days including holidays, intercessions, and weekends. Under this new streamline procedure, if exceptional circumstances cause delays in meeting the timeline, the parents shall be given written notice informing them of the delay, the reasons for delay, and the date services will be made available to student in accordance to the IEP.

The IDEA requires that the parents be given the opportunity to participate in meetings with respect to the identification, evaluation, educational placement and provision of a free appropriate public education (FAPE). Sometimes parents' refusal to participate or consent for services can cause a delay of timeline. Under IDEA, a parental consent is required in order to conduct an initial evaluation, a re-evaluation, or to initially provide special education services. Appendix A to the federal regulations (IDEA) states that if consensus cannot be reached regarding IEP decisions, the public agency has the ultimate responsibility to ensure FAPE and make the decision. In such case, the school

must provide the parents prior written notice. However, every effort should be made to resolve differences through mediation or due process. Because the federal law requires local school districts to provide free appropriate public education and there is a legal mechanism (due process hearing) to override parent's refusal to consent to the provision of services, the school boards have an obligation to provide special education services to students who need it without regard to the parent's consent (Maloney, M., 1998). Therefore, the school must file for a due process against the parents of the child in order to pursue the evaluation or to provide the services to a child with a disability.

For FY 1996-97, DOE reported that 1,190 (13.4%) of the referrals were not completed within the timeline due to delays in receiving non-departmental evaluation reports such as mental health evaluations. DOE contributed this to its lack of ability to control the processing time for non-departmental reports. Once the request for mental health evaluation is forwarded to the DOH's Family Guidance Center and private providers, the DOE's diagnostic teams lose control over the evaluation process. Although the DOE was required by Hawaii's special education laws to complete the evaluation within the 100 days timeline, the DOH and its private providers had no requirements in the statute or rules. Therefore, the DOE and its diagnostic teams did not have control over the delays caused by late mental health evaluations.

Sometimes a delay may occur when the services needed are unavailable. For an example, due to the shortage of child psychiatrists who are willing to participate with the Felix contracts, there is a waiting list for the psychiatric medication evaluation referrals, which may exceed the 60 days timeline. In some cases, the mental health providers are

not familiar with the special education laws and timeline. Thus, the mental health providers often work separately from school personnel.

Service testing is a tool to measure complex compliance, which is comprised of the School-Based Service Review (SBSR) and the Coordinated Services Review (CSR). It is a way to measure improvements in how schools are serving children with special needs. Service testing is a method used to examine student's success at the school-based level and coordinated services level. The SBSR/CSR serves as a helpful component to assess the State's effort to improve services to the children. The findings will help the complex and school to identify the target areas that need improvement, and to track their progress over time. Up until July 2001, the Department of Education was only responsible for managing the low needs Felix cases, and the Department of Health managed the high needs cases which usually involved multiple agencies and more intense services outside the school-setting. School-Based Service Review (SBSR) was used to test the less intensive needs cases managed by the Department of Education. Coordinated Service Review (CSR) was used to test the more intensive needs cases, involving multiple agencies and complex life situations, managed by the Department of Health. Felix-Class children were randomly selected from each school in each complex under the SBSR and CSR for service testing.

Appropriateness of Services

There are disagreements among the parties involved on the extent to which the state is meeting the federal standard on providing adequate services for disabled school children. Some parents of disabled children feel that the state is not doing enough for

their children. These parents feel that the attitude toward children with special needs must be changed. A parent commented, "people are not trying to get what they don't deserve, and that they're trying to obtain services they need and had a legal right to... because if there wasn't a problem, we wouldn't be in a consent decree." (Barayuga, D., The Star-Bulletin, September 4, 1998, A-4).

However, some teachers have expressed that the state is providing more under the Felix consent decree than what is necessary and required by the federal law. Rebecca Rosenberg, a special education teacher, voiced her frustration with the Felix consent decree and wrote,

> "While there is no requirement to maximize a child's progress, courts have repeatedly ruled that the educational benefit standard is not met if a child makes no progress or only trivial progress. The decree, however, is a moving target with ever expanding benchmarks to go far beyond compliance with the IDEA. For example, the decree requires that the DOE fund medication monitoring by psychiatrists, a service expressly excluded by the IDEA as a medical rather than an education service" ("Felix Decree," The Honolulu Advertiser, October 15, 2001, A9).

On the other hand, there are other people who held a different perspective about the Felix consent decree. According to Bruce Anderson, the director of the state Department of Health, and Paul LeMahieu, the former school superintendent, "Felix has afforded the state the opportunity and the incentives to address an educational and mental health system too long neglected."

However, there are also people who agreed that Felix is positive but felt that the State had done too little in the past, and now doing too much to compensate for children and adolescents with special needs ("Excessiveness", The Honolulu Advertiser, January, 24, 2001, A8). According to state auditor Marion Higa's report, the rush to improve special education services has produced a flood of new clients and new services, driving

up costs. She believed the state's focus should be on the effectiveness of the services rather than on getting the consent decree lifted (Keesing, A., The Honolulu Advertiser, January 20, 2001, A1, A8). She reported that the state is over providing in some cases and is admitting students who may not technically qualify for Felix-related help. She contributed this to the State's lack of clear definition on which children should be eligible for mental health services (Keesing, A., The Honolulu Advertiser, January 24, 2001, A8). She also criticized that the services are inappropriate, the identification of "Felix-class children" is faulty, a lack of independent oversight on the quality of the programs being put in place, and the lack of accountability which resulted with inconsistent cost from both departments (Keesing, A., The Honolulu Advertiser, January 20, 2001, A1, A8). However, Ivor Groves rejected Higa's report calling it "outdated", and felt that there is no evidence that children are being inappropriately identified.

With the increasingly high cost in the Felix's expenditure, the effectiveness and appropriateness of the services provided is under investigation. State Auditor Marion Higa had found questionable billings in the state spending. For example, Higa found a therapist's bill for 127 hours of services in one day. She reported, "We found for instance in one month there was a therapist who was paid for 1,765 hours and billed the state almost $60,000 for that month." (Dingeman, R., The Honolulu Advertiser, November 17, 2001, B1).

Since July 1, 2001, the Department of Education is managing the school-based services, which range from less intensive services such as individual/group counseling to more intensive services such as the day treatment program. Prior to the shifting in responsibility, the Department of Health funded all mental health services such as clinical

assessment/diagnostic services, emergency crisis intervention services, outpatient services, intensive support services, day treatment services, community based treatment services, and hospital-based treatment services. This sharing of responsibilities is called Option 1, which schools utilize procedures to authorize less intensive mental health services. Schools managed the services and arranged for such services directly from the DOH provider network. The DOH paid for less intensive mental health services authorized by the schools. The DOE was responsible for the care coordination of these services. The DOE procured services such as mental health assessments, family therapy, individual therapy, psychiatric evaluation, medication monitoring, participation in IEP/MP conferences, school consultation, and case management services. However, after July 1, 2001, the Department of Education took over the responsibilities in managing diagnostic assessment and psychiatric medication services, outpatient counseling services, and day treatment services. The Department of Health continues to manage the intensive services such as the community-based treatment services and the hospital-based treatment services. This shift in responsibility is called Option 2. The DOE will contract with DOH, which includes an agreed upon budget for specified purposes. The DOE directly hires additional staff to provide the needed mental health service, or the DOE will directly contract with private community providers within the DOH provider network or with another provider identified by the school.

The most intensive non residential community based service that the Department of Education is currently managing is the school based day treatment program, which is designed for students whose day to day functioning is impaired and exhibit serious behavioral disruptions. The day treatment program combines education and therapy,

blending interventions in a highly structured instruction that promote positive behavior change for students who are at-risk for out of home placement, institutionalization, being expelled or incarcerated. However, there is not sufficient research on these programs to assess its efficacy and validity. Like any other treatment service previously contracted by the Child and Adolescent Mental Health Division (CAMHD), there are insufficient data to support the effectiveness of these services.

The service policy was based on the recommendations of the research of the Task Force, which comprised of psychologists and medical doctors. According to the CAMHD's report on the most promising treatments for child and adolescent disorders, research findings is not meant to be "absolutely prescriptive". Since there is no research to support the effectiveness of mental health services in Hawaii, some adjustment and adaptation to Hawaii's culture must be considered (CAMHD Empirical Basis to Services Task Force, 2000).

According to the Child and Adolescent Mental Health Division (CAMHD) Clinical Standards Manual, mental health services are "designed to promote the ability of the youth to gainfully benefit from their education." However, some of the mental health services provided are questionable whether it is beneficial to one's education. Some parents misunderstood the criteria for being eligible for mental health services under Felix-Class population. To receive mental health services as "related services," the student must have a disability and be eligible for special education under IDEA or accommodations under Section 504. Furthermore, the behaviors have to be "substantially" or "adversely" affect his/her educational performance according to IDEA/Section 504 criteria.

Some of the questionable services that are not related to the student's education are respite, bio-psychosocial after-school program, and intensive in-home services. Under Option 2, the Department of Education does not provide respite, bio-psychosocial after-school program, and intensive in-home services because they are not relevant to the student's education.

According to the CAMHD Clinical Standards Manual, respite service is "the provision of care to an identified youths or youths to provide relief to the parents/primary caregivers. This service can be provided in the youth's home, provider's home, or in the community as requested by the parent. "Respite funds are to be used to pay for the care of the youth by an individual or an organization to relieve the family of responsibility for the child for a specified period of time to ultimately prevent out-of-home placement, prevent abuse/neglect, and/or preserve family unity" (Clinical Standards Manual, 1999). The concept of respite was a part of the Felix Consent Decree as "provision of assistance or relief for caregiver of class members" (Implementation Plan, 1995).

According to the CAMHD Clinical Standards Manual, biopsychosocial service is "a social skills building service which allows youth with serious emotional disturbance, developmental disabilities, behavioral disorders, or emotional disturbance to remain in or return to the community by providing after school, evening, weekend, and school vacation services.

The intensive in-home services "are provided on an outreach basis to youth and their families in the home and community." It typically pairs "a mental health professional" with a paraprofessional who work together in providing therapeutic and systemic support to the youth and family." (Clinical Standards Manual, 1999)

There is also the controversial issue of using public funds to support private school placement. A controversial concept of school vouchers has risen as a solution to the state's problems with special education. School vouchers use public money to pay for private school tuition and services. Opposing this idea as unconstitutional, Deputy Attorney General Russell Suzuki said, "the Hawaii Supreme Court is interpreting Article 10 (of the State Constitution) said that indeed when use public funds you can not use it to support or benefit a private educational institution." However, some Felix parents are able to use school vouchers to purchase services outside of the public school system with some services not being school-based (Kua, C., The Star-Bulletin, January 24, 2001, A1). However, non-disabled parents feel that school vouchers are unfair because it takes public money away from the public school system.

Chapter Three

DISCUSSION AND CONCLUSION

The Felix decree has made a national statement because of the way it combined children's educational and mental health needs with its' definition of mental health as a related services. Under 20 U.S.C. § 1401 (22) of 1997 IDEA statute, the Individuals with Disabilities Education Act (IDEA) defines related services as meaning "transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children" (Jones, N. L., & Aleman, S. R., 2000, App. A: 6). Mental health services is not mentioned anywhere in IDEA as a related services. Counseling services and rehabilitation services are the only services mentioned in IDEA that may be slightly similar to mental health services. Why did the federal court rule that the Department of Education, an educational institution, be responsible for providing mental health services, a medical component? Are the statutes in the IDEA and Section 504 so vague that it allowed for different interpretations of what "related services" truly mean? Unfortunately, the Section 504 regulations do not define the term "related aids and services". Section 504 only requires that an appropriate education include the provision of free appropriate public education (FAPE) (Gorn, S., 1998, pp. 2: 18-19). In the case

River Forest School District No. 90 v. Illinois State Board of Education, the court ruled that services that are not academic may still be considered "educational services," depending on the unique needs and abilities of the student (Maloney, M., 1998). In 1990, the U.S. Department of Education stated that the state Department of Education must provide or purchase mental health services for special education students when the Department of Health is unable to provide.

Under the clinical model of providing mental health services, the school personnel may feel intimidated to participate in the decision-making regarding a child's mental health needs. Most educators do have the medical background to make such a determination. Most school personnel, including myself, rely on the recommendations and diagnosis of the psychological or clinical assessments done by the psychologist/psychiatrists to determine if the child qualifies to receive mental health services. Generally, the referred students for mental health assessments often receive common diagnosis such as Attention-Deficit-Hyperactivity-Disorder (ADHD), Depression, and Conduct Disorder. Unfortunately, in most cases the mental health provider assigned to treat the child is either working for the same contracted private agency or is the same person who conducted the assessment and participated in determination of the child's eligibility. This conflict of interest may have contributed to the increase in Felix-class population.

Currently, Felix services that remained under the Department of Health's management are still based on a clinical model, and the school-based services managed by the Department of Education has adopted the principles of the educational model. Although home environment is vital to a child's development, where does the school's

responsibility end? Providing too much can actually hurt the student during the long term. Families will rely on the school on matters beyond education, thus weakening family bonds and responsibilities. In too many situations, schools care for too much of a child's needs. What recourse do schools have to make families more responsible for their children? Unfortunately, the courts have stepped in and forced us to care. If we were truly student-focused, the Felix Consent Decree would be a long bad dream rather than a reality.

The Felix Consent Decree has forced our system to self examine our best educational practices. Our focus has also shifted to developing a complete individual rather than a "good student". In theory, these ideals will only benefit our system. In reality, too many systematic problems exist to see any immediate impact.

Recommendations for Further Study

Due to the time constraint, this literature review provides a general overview of the impacts of the Felix consent decree. The information in this paper can serve as background knowledge to help educators who are interested in conducting a study extending from the mentioned issues in this paper. Some areas of interest that may be further explored include: (1) School Based Behavioral Health services. Examining the structure and effectiveness in an educational setting. (2) A comparative analysis of Hawaii's mental health services to mainland states. Can we deliver effective services with a similar price tag? (3) A longitudinal study of the effectiveness on mental health services on a student's education. This study can focus on its direct impact on a student's development. (4) The ethnic, socio-economic, and geographic breakdown of services

being delivered. Are certain areas or cultural groups more prone to receive mental health services? Perhaps, a further study into culturally centered education. (5) A closer examination of the CSSS process and its impact on our school system. Will this process clear the lines of communication and allow for timeliness and effective delivery of services?

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